

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 370

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO EMINENT DOMAIN; PROVIDING FOR DISPOSAL OF PROPERTY  
CONDEMNED PURSUANT TO THE REDEVELOPMENT LAW; PROVIDING FOR JUST  
COMPENSATION OF CONDEMNED PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-60A-12 NMSA 1978 (being Laws 1979,  
Chapter 391, Section 12) is amended to read:

"3-60A-12. DISPOSAL OF PROPERTY.--

A. A municipality may sell, lease or otherwise  
transfer real property or any interest ~~[therein]~~ in real  
property acquired by it in a metropolitan redevelopment area  
and may enter into contracts with respect ~~[thereto]~~ to the real  
property for residential, commercial, industrial or other uses  
or for public use or may retain such property or interest for  
public use in accordance with the metropolitan redevelopment

underscored material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1 plan, subject to any covenants, conditions and restrictions,  
2 including covenants running with the land and including the  
3 incorporation by reference [~~therein~~] in the covenants of the  
4 provisions of a metropolitan redevelopment plan or any part  
5 [~~thereof~~] of a metropolitan redevelopment plan, as it may deem  
6 to be in the public interest or necessary to carry out the  
7 purposes of the metropolitan redevelopment plan. The  
8 purchasers or lessees and their successors and assigns shall be  
9 obligated to devote the real property only to the uses  
10 specified in the metropolitan redevelopment plan for a period  
11 of years as set out in the sale or lease agreement and may be  
12 obligated to comply with other requirements [~~which~~] that the  
13 municipality may determine to be in the public interest,  
14 including the obligation to begin within a reasonable time any  
15 improvements on real property required by the metropolitan  
16 redevelopment plan. The real property or interest shall be  
17 sold, leased, otherwise transferred or retained at not less  
18 than its fair value for uses in accordance with the  
19 Redevelopment Law as determined by the governing body of the  
20 municipality or by the metropolitan redevelopment agency, if so  
21 authorized. In determining the fair value of real property for  
22 uses in accordance with the metropolitan redevelopment plan, a  
23 municipality shall take into account and give consideration to  
24 the uses provided in the plan, the restrictions upon and the  
25 covenants, conditions and obligations assumed by the purchaser

.164557.2

underscoring material = new  
[bracketed material] = delete

1 or lessee or by the municipality retaining the property and the  
2 objectives of the plan for the prevention of and recurrence of  
3 slum or blighted areas. The municipality in any instrument of  
4 conveyance to a private purchaser or lessee may provide that  
5 the purchaser or lessee shall be without power to sell, lease  
6 or otherwise transfer the real property without the prior  
7 written consent of the municipality until ~~[he]~~ the purchaser or  
8 lessee has completed the construction of any and all  
9 improvements ~~[which he has]~~ that the purchaser or lessee is  
10 obligated ~~[himself]~~ to construct ~~[thereon]~~ on the real  
11 property. Real property acquired by a municipality ~~[which]~~  
12 that, in accordance with the provisions of the metropolitan  
13 redevelopment plan, is to be transferred shall be transferred  
14 consistent with the carrying out of the provisions of the plan.  
15 The inclusion in any contract or conveyance to a purchaser or  
16 lessee of covenants, restrictions or conditions, including the  
17 incorporation by reference ~~[therein]~~ in the covenants of the  
18 provisions of a metropolitan redevelopment plan or any part  
19 ~~[thereof]~~ of the metropolitan redevelopment plan, shall not  
20 prevent the filing of the contract or conveyance in the land  
21 records of the county in a manner as to afford actual or  
22 constructive notice ~~[thereof]~~ of the filing.

23 B. A municipality may dispose of real property in a  
24 metropolitan redevelopment area to private persons only in  
25 accordance with the procedures set out in this subsection. The

.164557.2

underscored material = new  
[bracketed material] = delete

1 municipality shall, prior to entering into any agreement to  
2 convey title or an interest in real property, publish a public  
3 notice once each week for at least two consecutive weeks of the  
4 date, time and place it will receive proposals for the  
5 purchase, lease or rental, for development or redevelopment  
6 purposes, of the real property or interest [~~therein~~] in the  
7 real property it intends to dispose of. The public notice  
8 shall contain sufficient information to describe the location  
9 of the real property, the type of development sought or land  
10 use requirement and the selection criteria the municipality  
11 will follow during review of proposals and shall state that  
12 details may be obtained at the office designated in the notice.  
13 The municipality shall consider all proposals submitted in  
14 accordance with the public notice and shall only accept  
15 proposals it deems in the public interest and meeting the  
16 objectives of the metropolitan redevelopment plan after  
17 considering the type of development, redevelopment or use  
18 proposed and the financial ability of the persons making [~~such~~]  
19 the proposals to carry them out.

20 C. If after following the procedures set out in  
21 Subsection B of this section a municipality receives no  
22 proposals or determines the ones received are not in accordance  
23 with the call for proposals or do not meet the objectives of  
24 the Metropolitan Redevelopment Code, the municipality may  
25 reject any proposals received and then dispose of [~~such~~] the

.164557.2

underscored material = new  
[bracketed material] = delete

1 real property through reasonable negotiating procedures;  
2 provided, however, that negotiated sales, leases or transfers  
3 must be reported to the local governing body and approved by  
4 that body before [~~such~~] the sale, lease or transfer may take  
5 effect.

6 D. A municipality may operate and maintain real  
7 property acquired in a metropolitan redevelopment area pending  
8 the disposition of the property for development or  
9 redevelopment without regard to the provisions of Subsection A  
10 of this section for any uses and purposes deemed desirable even  
11 though not in conformity with the Redevelopment Law.

12 E. If property acquired through eminent domain  
13 pursuant to the Redevelopment Law has not been substantially  
14 improved, it may not be disposed of within five years after  
15 condemnation without being offered first to the condemnee at  
16 the same price paid to the condemnee by the condemnor or by  
17 paying to the condemnee an additional one hundred percent of  
18 the value of the original price paid for the property."

19 Section 2. Section 42A-1-24 NMSA 1978 (being Laws 1981,  
20 Chapter 125, Section 20, as amended by Laws 2001, Chapter 10,  
21 Section 1 and also by Laws 2001, Chapter 320, Section 1) is  
22 amended to read:

23 "42A-1-24. DETERMINATION OF COMPENSATION AND DAMAGES--  
24 INTEREST.--

25 A. For the purposes of assessing compensation and  
.164557.2

underscored material = new  
[bracketed material] = delete

1 damages, the right [~~thereto~~] to damages shall be deemed to have  
2 accrued as of the date the petition is filed, and actual value  
3 on that date shall be the measure of compensation for all  
4 property taken, and also the basis of damages for property not  
5 taken but injuriously affected in cases where such damages are  
6 legally recoverable; the amount of the award shall be  
7 determined from the evidence and not be limited to any amount  
8 alleged in the petition or set forth in the answer.

9 B. Whenever just compensation shall be ascertained  
10 and awarded in [~~such~~] the proceeding and established by  
11 judgment, the judgment shall include as a part of the just  
12 compensation awarded interest at the rate of ten percent a year  
13 upon the unpaid portion of the compensation awarded from the  
14 date the petition is filed to the date of payment or the date  
15 when the proceedings are finally abandoned. The judgment shall  
16 not include interest upon the amount represented by funds  
17 deposited by the condemnor pursuant to the provisions of  
18 Sections 42A-1-19 and 42A-1-22 NMSA 1978.

19 C. The court shall have the power to direct the  
20 payment of delinquent taxes, special assessments and rental or  
21 other charges owed out of the amount determined to be just  
22 compensation and to make orders as the court deems necessary  
23 with respect to encumbrances, liens, rents, insurance and other  
24 just and equitable charges.

25 D. The judgment shall credit against the total

.164557.2

underscored material = new  
[bracketed material] = delete

1 amount awarded to the condemnee any payments or deposits paid  
2 over to ~~[him]~~ the condemnee made before the date of entry of  
3 judgment by the condemnor as compensation for the property  
4 taken, including any funds ~~[which]~~ that the condemnee withdrew  
5 from the amount deposited by the condemnor pursuant to the  
6 provisions of ~~[Section]~~ Sections 42A-1-19 ~~[or]~~ and 42A-1-22  
7 NMSA 1978.

8 E. If the amount to be credited against the award  
9 under Subsection D of this section exceeds the total amount  
10 awarded, the court shall require that the condemnee pay the  
11 excess to the condemnor.

12 F. The price paid for similar property by one other  
13 than the condemnor may be considered on the question of the  
14 value of the property condemned or damaged if there is a  
15 finding that there have been no material changes in conditions  
16 between the date of the prior sale and the date of taking, that  
17 the prior sale was made in a free and open market and that the  
18 property is sufficiently similar in the relevant market with  
19 respect to situation, usability, improvements and other  
20 characteristics.

21 G. As used in this section, "value" means the fair  
22 market value or the price that would be agreed to by a willing  
23 and informed seller and buyer, taking into consideration:

24 (1) the present use of the property and the  
25 value for that use;

.164557.2

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(2) the value for the highest and best  
reasonably available use of the property consistent with the  
metropolitan redevelopment plan pursuant to the Redevelopment  
Law; and

(3) the machinery, equipment and fixtures  
forming part of the property to be condemned."